

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO.: _____

ODORSTAR TECHNOLOGY, LLC,
a Florida Limited Liability Company, and
STAR BRITE DISTRIBUTING, INC., a
Florida corporation,

JURY DEMAND

Plaintiffs,

v.

CLO2 SYSTEMS, INC. d/b/a ODOR RESCUE,
a Delaware corporation; and TODD
SCHROETER, an individual,

Defendants.

_____ /

VERIFIED COMPLAINT FOR PATENT INFRINGEMENT

Plaintiffs, OdorStar Technology, LLC (“Odorstar”) and Star Brite Distributing, Inc. (Star Brite) (collectively referred to herein as “plaintiffs”) by and through their undersigned counsel, hereby allege in their Complaint against CIO2 Systems, Inc. d/b/a Odor Rescue (“Odor Rescue”) and Todd Schroeter (“Schroeter”) (collectively referred to herein as “defendants”) as follows:

NATURE OF THE ACTION

1. This is a civil action for patent infringement of United States Patent No. 6,764,661 (hereinafter “the ‘661 Patent”) arising under the Patent Laws of the United States, 35 U.S.C. § 1 *et seq.*

JURISDICTION AND VENUE

2. This Court has original jurisdiction over the subject matter of this action under 28 U.S.C. §§ 1331, 1332(a), and 1338(a) because this action arises under the Patent Laws of the United States, 35 U.S.C. § 1 *et seq.*

3. The parties are diverse and the amount in controversy exceeds \$75,000 exclusive of interests and costs.

4. This Court has personal jurisdiction over the defendants pursuant to Florida's long-arm statute F.S. § 48.193 (1)(a)-(b) and (f)(1)-(2) in that the defendants are (a) operating, conducting, engaging or carrying on a business in the State of Florida and (b) committing tortious acts within the State of Florida.

5. Venue is proper in this district under 28 U.S.C. §§1391 and 1400(b).

6. Joinder of the plaintiffs is proper under Fed. R. Civ. P. 20(a)(1) as Star Brite is the exclusive licensee of the '661 Patent and plaintiffs assert any right herein jointly against defendants and there are questions of law and fact common to all plaintiffs.

7. Joinder of the defendants is proper under Fed. R. Civ. P. 20(2) and 35 U.S.C. § 299(a) as, on information and belief, Schroeter aided and abetted the infringement of plaintiffs' patent by inducing Odor Rescue to infringe plaintiffs' patent

THE PARTIES

8. Odorstar is a Florida Limited Liability Company with its principal place of business in Fort Lauderdale, Florida.

9. Star Brite is a Florida corporation with its principal place of business in Fort Lauderdale, Florida.

10. On information and belief, Odor Rescue is a Delaware Corporation with its principal place of business in Springfield Center, New York.

11. On information and belief, Schroeter is the President of Odor Rescue and is resident of Medina, Ohio.

THE PATENT-IN-SUIT

12. On July 20, 2004, U.S. Patent No. 6,764,661, entitled “Device for producing an aqueous chlorine dioxide solution,” was duly and lawfully issued by the United States Patent and Trademark Office (“USPTO”). A true and correct copy of the Patent is attached hereto as Ex. A.

13. J. Blair Girard is the sole inventor and owner of the ‘661 Patent.

14. Odorstar is the sole owner by assignment of the ‘661 Patent.

15. The ‘661 Patent is in full force and effect as of the date of this Complaint and at all times relevant to the allegations herein.

FACTUAL BACKGROUND

Odorstar and Star Brite

16. Odorstar is an industry leader in the management and treatment of boat, car, and household odors. Odorstar’s exclusive licensee of the ‘661 Patent, Star Brite, sells and offers for sale, a line of deodorizing products under the brand name NOSGUARD® which are sold on-line throughout the United States and at least in this District at West Marine stores. The NOSGUARD® brand deodorizers operate by releasing a safe chlorine dioxide gas from a pouch containing a dry material that releases gas when exposed to water. The chlorine dioxide gas is released for a period of time and destroys odors caused by, for example, mildew or mold.

17. The NOSGUARD® brand deodorizers are further sold and marketed under other brand names depending on the desired use. For example, Star Brite offers for sale CAR

BOMB®, BOAT BOMB® brands of the NOSGUARD® products to treat odors in boats and car respectively, as well as a slow release and fast release product. See <http://www.westmarine.com> and www.starbrite.com for examples of Star Brite’s line of NOSGUARD® products.

Odor Rescue

18. On information and belief, Odor Rescue is in the business of using, selling, and offering to sell an odor eliminating product called “Odor Rescue: Automotive Interior Deodorizer”. See <http://www.odorrescue.com/> and Ex. B.

19. On information and belief, Odor Rescue is in the business of using, selling, and offering to sell an odor eliminating product called “Odor Rescue: Aquesan Automotive”. Ex. C

20. The Odor Rescue products identified in Paragraphs 18-19 above are collectively referred to as the “Odor Rescue infringing products.”

21. Odor Rescue has placed the Odor Rescue infringing products into the stream of commerce with the knowledge and/or understanding that such products are sold to and used by customers in this District.

22. The Odor Rescue infringing products infringe at least one claim of the ‘661 Patent.

23. On information and belief, Schroeter is an officer of Odor Rescue and has induced the infringement of the ‘661 Patent by advertising and marketing the Odor Rescue infringing products within this State and within this District by aiding, abetting, and/or directing Odor Rescue in its infringement of the infringing products.

COUNT I

(Infringement of U.S. Patent No. 6,764,661)

24. Plaintiffs re-allege and incorporate paragraphs 18-23 from above.

25. Odor Rescue has directly infringed and continues to directly infringe, literally and/or under the doctrine of equivalent, one or more claims of the '661 Patent by making, using, offering to sell and/or selling the infringing products and associated components in the United States without authority and in violation of 35 U.S.C. §271(a).

26. Schroeter has infringed one or more claims of the '661 Patent by inducing others to infringe the '661 Patent, namely Odor Rescue, in violation of 35 U.S.C. § 271(b). Specifically, Schroeter has actively induced, and continues to induce, the infringement of one or more claims of the '661 Patent at least by aiding and abetting and/or directing the infringement of the '661 Patent by Odor Rescue.

27. Defendants' infringement of the '661 Patent has been willful and deliberate.

28. Defendants' infringement of the '661 Patent will continue unless enjoined by this Court.

29. As a direct and proximate result of defendants' infringement of the '661 Patent, plaintiffs have suffered and will continue to suffer irreparable injury and damages in an amount not yet determined for which plaintiffs are entitled to relief.

PRAYER FOR RELIEF

WHEREFORE, plaintiffs respectfully request the Court:

A. Enter a judgment that defendants have infringed, induced infringement and contributed to the infringement of the '661 Patent.

B. Order defendants to pay damages to adequately compensate plaintiffs for defendants' patent infringement, including an award of defendants' profits from its infringement of the '661 Patent as well as plaintiffs' lost profits, together with pre- and post-judgment interest.

C. Enter a permanent injunction pursuant to 35 U.S.C. § 283, restraining and enjoining defendants and their respective officers, agents, servants, employees, attorneys, customers, licensors, suppliers and those in concert or participation with them from any further sales, offers for sale, importation or use of infringing products and services and any other infringement of the '661 Patent.

D. Find that defendants' patent infringement was willful and malicious and award treble damages to plaintiffs under 35 U.S.C. §284.

E. Find this to be an exceptional case of patent infringement under 35 U.S.C. §285 and award reasonable attorneys' fees, costs, and expenses incurred by plaintiffs in prosecuting this action.

F. Award such other and further relief as the Court deems just and equitable.

DEMAND FOR JURY TRIAL

Plaintiffs request trial by a jury for all claims and issues so triable.

Dated: January 18, 2013

Respectfully Submitted,

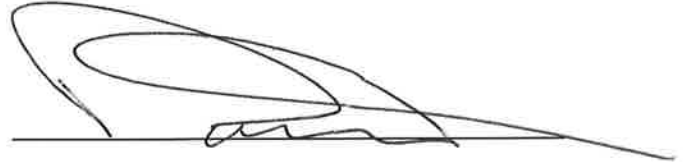
By: s/ Garrett Barten
Garrett Ari Barten, Esq.
gbarten@cwiplaw.com
Florida Bar No. 55371
John Christopher, Esq.
jchristopher@cwiplaw.com
Florida Bar No. 493465
CHRISTOPHER & WEISBERG, P.A.
200 East Las Olas Boulevard, Suite 2040
Fort Lauderdale, Florida 33301
(954) 828-1488 (Telephone)
(954) 828-9122 (Facsimile)
Attorneys for Plaintiffs

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VERIFICATION

I, Peter Dornau, hereby verify that I have read and understood the foregoing Complaint and that the information herein is true and correct to the best of my knowledge and belief and I am duly authorized to make this verification on behalf of plaintiffs in this action.

Dated: January 18, 2013

A handwritten signature in black ink, appearing to read "Peter Dornau", is written over a horizontal line. The signature is stylized with a large, sweeping initial "P" and a long, horizontal tail.